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**NATURAL
HERITAGE ACT**

MLA
Committee
*Report and
Recommendations
on Key Issues*



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NATURAL HERITAGE ACT

Honourable Gary Mar Q.C.
Minister of Environment

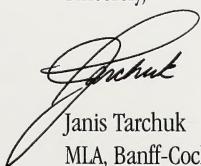
Dear Mr. Mar:

The MLA Committee on the *Natural Heritage Act* is pleased to present the Committee's report and recommendations on key policy issues relating to this legislation. The Committee identified six key policy areas for further public review and ensured that a fair and equitable public consultation process was established to solicit stakeholder and general public comment on these issues.

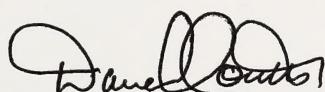
The Committee completed a detailed review of the findings of the consultation process and reviewed the issues carefully. The issues are complex and the Committee had a difficult task in determining the most appropriate policy recommendations in relation to these issues. However, we feel that the recommendations outlined in this report provide a balanced and reasonable approach that will enhance the long-term protection of Alberta's parks and protected areas and thereby ensure that our natural heritage is preserved.

We offer our continuing support to help advance decision-making on these important issues.

Sincerely,



Janis Tarchuk
MLA, Banff-Cochrane
Committee Chair



Dave Coutts
MLA, Livingstone-Macleod
Committee Vice Chair

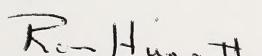


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1.0 INTRODUCTION

1.1

Role of the MLA Committee

The principal objective of the MLA Committee was to develop and oversee a public review of key issues related to the proposed *Natural Heritage Act*. To accomplish this, the Committee defined and monitored a public consultation process to confirm key issues and ensure that the consultation process was conducted in a fair and effective manner. Equus Consulting Group was contracted by Alberta Environment to develop and complete the consultation process. The MLA Committee reviewed the findings of the process and developed the recommendations outlined in this report, for the Ministers consideration.

In formulating its recommendations, the MLA Committee reviewed the findings in relation to existing and proposed policy pertaining to the key issues. The policy and practice of other comparable Canadian jurisdictions was also reviewed as additional background.

1.2

Scope of Review

The MLA Committee limited the scope of its review to policy issues relating to five key areas of concern. These were identified through earlier public feedback and confirmed in the consultants initial 'issue identification' discussions with major stakeholder groups. These included;

- oil and gas exploration and development in parks and protected areas,
- mining in parks and protected areas,
- recreational off-highway vehicle (OHV) and snowmobile use in parks and protected areas,
- hunting in parks and protected areas, and
- reclassification of natural areas.

One additional issue (Ministerial flexibility vs. certainty) was identified through these discussions and was also reviewed by the MLA Committee.

1.3

General Considerations and Summary of Major Findings

All comparable provincial jurisdictions are faced with the challenge of expanding their respective parks and protected area systems and managing pre-existing uses and commitments that are inconsistent with the purpose of these areas. The main issues are resource commitments and existing recreational activities that may conflict with the purpose and intent of parks and protected areas, even though such activities are generally acceptable on Crown land outside of these areas.

The major findings of the public consultation process can be summarized as follows:

Perceptions of the *Natural Heritage Act*

As in the 1998 public consultation process, the majority of people who commented felt that the consolidation of the legislation was desirable and that the proposed legislation is valuable to Albertans and should proceed. However, their support is contingent upon a number of changes being made. Most participants felt they had a good understanding of the purpose of the legislation.

Policy Considerations

There is some broad divergence of opinion amongst those that provided input on the various policy issues and in most cases, there are no solutions that will satisfy all Albertans.

- Oil and gas development and mining commitments are the most significant issues for the public. There is a general view that resource development is incompatible with the purpose of parks and protected areas and must be phased out. A more flexible approach to dealing with existing commitments is preferred.
- Natural area reclassification on balance is not a major issue.
- Recreational use of OHVs and snowmobiles in parks and protected areas is controversial.
- Opinions on hunting are varied, but generally the proposed policy is supported with some clarification and additional conditions.
- The proposed *Natural Heritage Act* reflected a balanced approach to providing certainty vs. ministerial flexibility. The degree of ministerial flexibility that should be provided for in the legislation is controversial. Many respondents feel that some flexibility is required to respond to various situations, while others feel that the Act should be more prescriptive and provide for more certainty and less flexibility for the Minister.

2.1

Oil and Gas Exploration and Development in Parks and Protected Areas

Oil and gas exploration and development is a significant area of concern. General findings from the public input process indicate strong opinion that oil and gas exploration and development activities are inconsistent with the purpose of parks and protected areas. Issues include new dispositions, existing dispositions and management of the activity.

New Dispositions

Under current and proposed legislation, *Mines and Minerals Act* dispositions would not be issued in wilderness areas or Willmore Wilderness Park. These areas are free of dispositions. In provincial parks, wildland parks and ecological reserves, new oil and gas dispositions can only be issued subject to 'no surface access'. Under this restriction, exploration is prohibited and the resource can only be accessed by directional drilling from outside the area - generally 100m from the boundary as a minimum. This effectively precludes any new development in these areas, except for any dispositions sold prior to designation that did not restrict surface access.

Some respondents suggest that no oil and gas rights should be sold in these areas even without surface access, as this may still generate intensive industrial activity along park and protected area boundaries. Others view this as a reasonable approach that allows some access to the resource without directly impacting the area. The existing policy on new dispositions has been in place for many years and has generally been effective.

Recommendations

- *The existing requirement for 'no surface access' restrictions on any new oil and gas rights underlying provincial parks, wildland parks and heritage rangelands is effective and will eventually lead to a situation where all areas are free of oil and gas activity. This policy should be continued as proposed and be reinforced in the new legislation.*

Existing Oil and Gas Commitments

A number of existing and candidate parks and protected areas contain existing well sites in production or have undeveloped oil and gas dispositions that have no existing restrictions on surface access. Under the current and proposed policy, all such commitments would be honoured. These situations are the most contentious from a public and industry perspective. The findings of the consultation process indicate strong support for a range of options to be available for the Minister to use, to manage the transition from a situation where oil and gas activity is occurring in an area to a situation where the area is ultimately free of the activity.

Recommendations

- Consideration should be given to establishing a mandatory requirement for the Minister of Environment and Minister of Resource Development to review existing oil and gas dispositions in all areas and to develop a transition plan for the management and ultimate phase out of the activity over time, in situations where existing rights exist that have no restrictions on surface access.*
- The plan should include consideration of options with the disposition holders and in any cases where the Ministers deem it appropriate, consideration of the existing range of alternatives provided under the Mines and Minerals Act (e.g. exchange, cancel or otherwise acquire rights). These provisions should be reviewed to ensure that the appropriate range of options is available.*

Considerations

The requirement for transition plans would ensure that each situation is reviewed and any options available for a given area are explored with disposition holders. This approach would require the Crown to enter into discussions with disposition holders and to develop a transition plan, but would not commit the Crown to any particular course of action, as this would vary based on site specific factors and opportunities.

Given the number of areas involved, the extent of commitments, variety of site specific factors and varying opportunities and options that may be workable at any given site, it is recognized that completion of transition plans for all areas with such commitments will take considerable time to complete.

Priority should continue to be placed on securing the lands needed for Alberta's parks and protected areas system and managing these areas over the long-term to eliminate existing dispositions over time.

The current prohibition on any new dispositions with surface access will ensure that a transition to a situation where all parks and protected areas are free of well sites and associated infrastructure can occur in an orderly manner over time. Completion of transition plans for existing dispositions could enhance this process.

2.0 POLICY ISSUES AND RECOMMENDATIONS

Managing Oil and Gas Development

The management of oil and gas activity in and adjacent to parks and protected areas is also a concern. Findings indicate concern that any activity in these areas needs to be more strictly controlled to ensure ecological integrity is not compromised, impacts of the activity are minimized and reclamation completed to restore natural conditions.

Directional drilling from outside a park or protected area is used to access new dispositions and any existing dispositions with 'no surface access' restrictions. The public sees directional drilling as a viable option for accessing resources from outside a park or protected area, but the public consultation results indicate there is also concern about possible impacts of this activity on parks and protected areas, especially if there is intensive activity along area boundaries.

Recommendations

- *Higher standards currently apply to oil and gas development in areas established under the Provincial Parks Act. These standards could also be applied in other classes where there is existing infrastructure and/or the possibility of development of pre-existing dispositions. The need for additional requirements should also be reviewed in consultation with Alberta Resource Development and industry.*
- *The standards and conditions that currently apply to conducting resource activity on lands adjacent to parks and protected areas should be reviewed to determine if any additional measures or conditions are required to minimize impact on these areas.*

2.2 Mining in Parks and Protected Areas

Potential mining commitments in parks and protected areas is a contentious issue. The public consultation process indicated a strong view that mining is not appropriate in parks and protected areas and conflicts with the purpose of these areas. Results from the public consultation process suggest that development of transition guidelines and a flexible approach is required for dealing with potential conflicts involving mineral exploration and mineral rights.

Most existing areas are free of any freehold minerals or dispositions for coal, metallic or industrial minerals, but a number of candidate areas under the Special Places program contain such commitments or are subject to mineral exploration permits issued prior to 'interim protection' measures being applied.

Under the proposed policy, no new rights would be issued after designation. If a company holding a disposition or a 'freehold' mineral owner wishes to develop an existing commitment, the Alberta Energy and Utilities Board (AEUB) would review the application through the existing review process. If the AEUB rules that the development is not in the public interest, then the development request is rejected and compensation is possible under the *Mines and Minerals Act*. Should a mine be approved, the area affected would be deleted from the park or protected area and equivalent lands added to the parks and protected areas system.

When an area is designated over 'freehold' minerals, consent to the designation is obtained from the mineral owner. In the event a mineral owner or a disposition holder wishes to develop the resource, the *Mines and Minerals Act* provides the Minister of Resource Development authority to acquire 'freehold' minerals by expropriation and to withdraw dispositions, if the Minister is of the opinion that any further exploration or development is not in the public interest.

Recommendations

- *Areas under existing exploration permits should continue to be established as protected areas. Existing exploration rights are time sensitive and will expire. If a viable resource is discovered, the company could apply for development approval through the normal regulatory process.*
- *Consideration should be given to establishing a mandatory requirement for the Minister of Environment and Minister of Resource Development to review existing mineral dispositions in all areas and to develop a transition plan for the management and ultimate phase out of the activity over time, in situations where there are no restrictions on surface access.*

- *'Freehold' minerals and existing undeveloped coal, metallic and industrial mineral dispositions should be treated as per current proposed policy.*

Considerations

Special Places candidate sites have been selected partially on the basis of site condition and extent of existing commitments, in addition to ecological value. While some areas have existing mineral commitments, these are not extensive in real terms. Therefore, the extent of potential conflict is not expected to be significant over the long-term.

Exploration permits are not issued for existing parks and protected areas. No new exploration permits are issued for areas under 'interim protection' under the Special Places program. Eventually, all areas would be free of such commitments (no new commitments). Exploration permits cover large areas. More detailed exploration is focussed on a small percentage of the total area under permit. There is no resource to value until a discovery is made and a disposition is applied for.

There will not likely be many applications to develop mines within a park or protected area over the long-term. However, if development applications are received, then a mechanism is required to address this possibility. The AEUB regulatory process would apply. In the event that the application were denied, compensation would be considered in accordance with the *Mines and Minerals Act*. If approved, the area would have to be replaced elsewhere in the system. The ecological significance of the area and whether or not the lands could be replaced could be key considerations in the decision-making process. This approach represents a reasonable alternative.

Most land allocation decisions have already been made in the Province, so finding equivalent replacement lands that are unencumbered may be difficult should this arise in future. Industry has already raised this as a potential concern.

2.3

Hunting in Parks and Protected Areas

Hunting in parks and protected areas concerns many Albertans. Hunting in parks and protected areas does not appear to be well supported by the general public. Reduced opportunities for wildlife viewing, conflicts with other recreational activities, public safety and the perception that parks and other protected areas should protect wildlife are often cited as reasons why hunting should not be allowed. Although there is some opposition to hunting in wildland parks, the activity does not generally have much impact given the remote location of most of these areas, difficult access and prohibition of OHV access in most areas.

Two policy concepts were put forward through the public consultation process; recreational hunting and management hunts to control population imbalances.

Recreational Hunting

The position put forward was to continue the existing policy. Recreational hunting would continue to be prohibited in wilderness reserves, provincial parks and ecological reserves, but recreational hunting for licenced species would continue in wildland parks, heritage rangelands and large recreation areas subject to approval and any specific conditions established in the management plan. Interim guidelines would be established by the Minister to cover the time period between designation and completion of the management plan.

Recommendations

- *Although there appears to be some opposition to the concept of any hunting in any parks or protected areas, the Committee feels that on balance, the proposed policy position with respect to recreational hunting is reasonable and should continue.*
- *Potential conflicts between hunting and other recreational uses in areas where hunting is permitted will need to be addressed in management plans.*

2.0

POLICY ISSUES AND RECOMMENDATIONS

Management Hunts

Management hunts for controlling populations of a specific species appear less acceptable as proposed. The policy proposed was to allow for the possibility of management hunts in ecological reserves and provincial parks to control the number of animals of a specific species, in order to restore ecological balance. To date, management hunts have only been used in two provincial parks and one ecological reserve for controlling deer and elk populations where adjacent ranching areas were impacted by wildlife. Members of the public who receive licences through a special draw complete the management hunts.

A large number of respondents supported the concept of management hunts, but recommended a number of conditions. Common recommendations from the public and focus group participants included requirements that management hunts must be based on good science and that conservation officers should carry out the hunting rather than the public. Some respondents questioned the value or impact of management hunts or felt that 'nature should take its own course' in these areas, since they are established to protect natural processes. A number of respondents were concerned about public safety or indirect impacts of this activity in sensitive areas such as ecological reserves.

Recommendations

- *The potential use, benefit and implications of management hunts should be reviewed and consideration given to additional conditions and limitations, such as having conservation officers complete any required management hunts, relocation of animals, etc.*

2.4

Recreational Off-Highway Vehicle and Snowmobile Use in Parks & Protected Areas

There appears to be considerable opposition to the use of OHVs and snowmobiles in all classes of parks and protected areas with similar results being obtained from the focus groups and stakeholders. In addition, ranching interests have indicated that such activities are inappropriate in heritage rangelands and should be prohibited. Many respondents feel that these activities are not compatible with the purpose of parks and protected areas and have a significant impact on wildlife, etc. Concerns include off trail use and impacts on wildlife and on other non-motorized users. There are also significant concerns regarding the capability to manage the activity if allowed and concerns about enforcement and safety. These findings are consistent with the earlier public input process.

Recommendations

- *Recreational OHV and snowmobile use in heritage rangelands should be prohibited as proposed in the original 1998 policy proposal.*
- *Recreational OHV and snowmobile use in wildland parks should be restricted to existing trails that are approved for continuation in the management plan and restricted to winter use only. Recreational use during other times of the year should be prohibited.*
- *Recreational OHV and snowmobile use in large recreation areas should continue to be restricted to existing trails that are approved for continuation in the management plan.*
- *The department should increase education and enforcement efforts relating to this activity to ensure an appropriate level of resource protection and safety in those wildland parks and recreation areas where activity is permitted and to ensure that illegal activity is mitigated in other areas.*

- *Recreational OHV and snowmobile use should be redirected to general Crown land areas outside of parks and protected areas. It may be appropriate to expand opportunities on general Crown land as an alternative (e.g. use of seismic lines). Additional opportunities could be considered in areas outside of parks and protected areas. Programs to encourage safety and responsible use as well as appropriate enforcement should also be considered to manage the activity on general Crown land.*

2.5 Reclassification of Natural Areas

The public consultation process indicated strong support for the concept of reclassifying existing natural areas in the class that provides the highest level of protection in relation to the area's significance, condition and existing use, as proposed. However, some concerns were evident with the proposal to classify natural areas that are not considered to be at least provincially significant from an ecological perspective as recreation areas. Even though most of these areas would be placed in the proposed 'natural' recreation area category, natural area stewards and others still have a perception that these areas are being downgraded (even though the level of protection proposed for recreation areas is higher than the level of protection currently provided for natural areas).

Recommendations

- *Natural areas that are of provincial or greater significance should be redesignated as or added to ecological reserves, wildland parks, provincial parks or heritage rangelands to provide a higher level of protection as proposed.*
- *The 'natural area' class should be retained and redefined. The redefined class should include natural areas of local or regional significance established for local conservation and educational purposes. This would include those areas that would have been placed in the 'natural recreation area' category.*

- The 'natural area' class should also prohibit OHV and snowmobile trails, as these will be very small areas. Hunting, fishing and trapping could continue where approved in the management plan. All access should be foot access. Horse use may be possible at some areas, but should be determined through the management plan. Due to the small size of these sites, new industrial development should not be considered. Any new oil and gas dispositions should be sold 'with no surface access' and existing dispositions should be accessed by directional drilling from outside the area wherever possible.

Considerations

Retention of a modified 'natural area' class would provide additional flexibility to designate sites that do not meet the criteria for other more protected classes. Retaining natural areas as a separate class will also provide tighter definition to the recreation area class. Retaining the 'natural area' name should offset the public perception that these sites are being 'downgraded'.

Additional prohibitions and restrictions will help to better protect these areas. Addressing these points may help to garner support for the new legislation from Alberta's protected area stewards.

Many of these areas currently have access restrictions for oil and gas development or do not have existing development. Restricting new surface access in some of these areas may be of concern to Alberta Resource Development. Those natural areas that are already heavily developed for oil and gas production that do not have significant ecological value should not be continued under the new legislation, as these areas diminish the value of other areas in this class if retained in the system.

Restricting motorized access may be a local issue for some areas. Areas with high historical levels of OHV or snowmobile use should be classed as recreation areas or not be continued under the new legislation and revert to general Crown land.

2.6

Certainty vs. Ministerial Flexibility

The need for certainty vs. ministerial flexibility was discussed in the focus groups and in the stakeholder workshops. Results were split on this subject. Certainty is provided by prescriptive legislation. Ministerial flexibility is provided by legislation that is 'enabling'.

The *Wilderness Areas, Ecological Reserves and Natural Areas Act* and *Willmore Wilderness Park Act* contain all prohibitions in legislation and are very prescriptive.

The *Provincial Parks Act* is enabling, with the Minister having considerable flexibility in decision-making, with regulation and policy being used to implement the Act and respond to changes over time. Much of the subject matter now covered by regulation under the *Provincial Parks Act* was moved up into the Act to provide for greater certainty. Retention of the wilderness areas and their prohibitions under the new legislation will enhance the level of 'certainty' already provided.

The Committee believes that the current approach to the legislation provides a balance between flexibility and certainty. This approach should provide for effective certainty for existing sites, while also providing the needed flexibility to secure the land base for completing Alberta's system of parks and protected areas.

Recommendations

- *It is recommended that the approach to balancing certainty and flexibility inherent in Bill 15 be maintained in the new legislation.*
- *At the conclusion of the Special Places program, Alberta's parks and protected areas system will be largely completed. Emphasis will shift from securing the land base to providing for the long-term management and protection of these areas. Given this shift, it would be appropriate to review the legislation in five years time, to assess its effectiveness and identify any further improvements required.*

3.0 OTHER CONSIDERATIONS

3.1 Name of the Act

There is some degree of public recognition with the name '*Natural Heritage Act*', but the name does not convey the purpose of the legislation to the public. Many people do not understand what 'natural heritage' is or have different impressions. Changing the name could be confusing for the public at this stage. If the changes to the Act are not extensive, retaining the name should be considered. However if the changes are more substantive and there is a desire to reflect this through a name change, then any new name must appropriately reflect the purpose of the legislation (i.e. parks and protected areas) for better public recognition.

3.2 Release of Reports

It is recommended that the Public Consultation Results be released to the public. The recommendations of the MLA Committee should also be released.

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ISBN 0-7785-1177-4 Printed Version
0-7785-1178-2 On-line Version

Printed March 2000

Alberta
GOVERNMENT OF ALBERTA